

ESTATE OF ANITA WALSEY

IBIA 00-108

Decided October 4, 2000

Appeal from an order denying rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate No. IP SA 255N 99.

Docketed and dismissed.

1. Appeals: Generally--Board of Indian Appeals: Generally

The regulations of the Board of Indian Appeals do not authorize the filing of a notice of appeal by telefax.

APPEARANCES: Cecelia Walsey-Begay, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

On August 28, 2000, the Board of Indian Appeals received a telefaxed copy of a document signed by Cecelia Walsey-Begay (Appellant) concerning the Estate of Anita Walsey. The copy was apparently telefaxed to the office of the Director, Office of Hearings and Appeals. Although it was not addressed to this Board, it was forwarded to the Board because it concerned an Indian probate matter.

The telefaxed document appeared to be a copy of a notice of appeal although it did not specifically identify the order or decision being appealed. The Board contacted the office of Administrative Law Judge William E. Hammett and learned that Judge Hammett issued an Order Denying Informal Petition for Rehearing in the Estate of Anita Walsey on June 28, 2000.

The Board awaited receipt of the original notice of appeal from Appellant. When no notice of appeal had been received by September 8, 2000, the Board wrote to her, informing her of that fact and giving her an opportunity to show that she had timely mailed a notice of appeal to the Board in accordance with the instructions in 43 C.F.R. § 4.320.

Appellant's response was due on or before September 25, 2000. No response has been received.

Discussion and Conclusions

43 C.F.R. § 4.320 governs the filing of notices of appeal in Indian probate matters. 43 C.F.R. § 4.320(a) requires that a notice of appeal to the Board in an Indian probate matter be filed with the Board within 60 days from the date of the decision being appealed. 43 C.F.R. § 4.320(b) provides: "The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals." Under 43 C.F.R. § 4.310(a), the effective date for filing a notice of appeal with the Board is the date of mailing or personal delivery.

Judge Hammett furnished Appellant with a copy of 43 C.F.R. § 4.320 and informed her that a notice of appeal to the Board must be filed in accordance with that regulation.

[1] It appears possible that Appellant intended the telefaxed copy to be her actual notice of appeal to the Board. However, the Board's regulations do not authorize the filing of a notice of appeal by telefax. As is explicitly stated in 43 C.F.R. § 4.320(b), a notice of appeal must be filed either by mail or by personal delivery. Accordingly, the telefaxed copy cannot be considered. 1/

Appellant has not shown that she filed a timely notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this purported appeal is docketed and dismissed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

1/ In extraordinary circumstances, the Board may authorize the filing of specific documents by telefax during the course of an appeal (i.e., during briefing or other proceedings after a notice of appeal has been filed). Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day.

The Board does not accept telefaxed documents for which permission to file by telefax has not been granted.